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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/725,707	12/02/2003	Juan Ruben Valerio		4742

7590

10/19/2005

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EXAMINER

HINZE, LEO T

ART UNIT

PAPER NUMBER

2854

DATE MAILED: 10/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/725,707

Applicant(s)

VALERIO, JUAN RUBEN

Examiner

Leo T. Hinze

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 4-9 is/are rejected.
- 7) ☒ Claim(s) 3 and 10-12 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

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## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 2 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walton, US 3,996,879 (Walton) in view of Wirtschafter, US 4,448,541 (Wirtschafter).

a. Regarding claim 1:

Walton teaches a medication reminder for a bottle tapered from a small generally circular bottom end to a large generally circular open mouth, the device comprising a

C-shaped support (14, Fig. 1) including a pair of arms having spaced apart ends (16, Fig. 1), the support being sized to receive the small bottom end of the bottle and resilient to expand and thereby captivate an intermediate section of the bottle ("made of a plastic material having some resilience", col. 2, ll. 42-43); and an old-fashioned indicator (26, Fig. 1) that requires a user to manually move a slider (32, Fig. 1) each time a medicine is taken. Walton teaches a cavity that can be used to contain circuitry (20, Fig. 1). Walton further teaches that serious health effects can be encountered if more than one pill is taken or if no pill is taken (col. 1, ll. 19-25).

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Walton does not teach a circuit carried by the support including a battery receiver, an alarm, circuitry connecting the battery receiver and the alarm for energizing the alarm at predetermined times and a normally off switch exposed through an interior of the C-shaped support for closing the circuitry and starting the timer in response to placing a bottle into the interior of the support.

It has been held that mere automation of a manual activity is generally not sufficient to patentably distinguish an invention over the prior art. See MPEP § 2144.04 (III).

Wirtschafter teaches a medical timer apparatus including a circuit including a battery receiver (not shown, col. 4, l. 30), an alarm (12, Fig. 1), circuitry connecting the battery receiver and the alarm for energizing the alarm at predetermined times (circuitry not shown, col. 4, l. 22) and a normally off switch (13, Fig. 1) exposed through an interior of the body for closing the circuitry and starting the timer in response to placing a bottle into the interior of the support (col. 5, ll. 35-45). Wirtschafter teaches that it is important for a patient to take their medication as prescribed, and that missing a dose or doubling a dose can have serious consequences (col. 1, ll. 9-15).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to update Walton by replacing the manually movable slider and non-alarm indicator with an automated alarm indicator similar to that of Wirtschafter, because a person having ordinary skill in the art would recognize that the automated alarm of Wirtschafter may have the following benefits: automated operation that will make it less likely that a patient will forget to move the slider of Walton, thereby reducing the likelihood of missing or doubling a

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dose; the automated operation of Wirschafter may be easier for small hands or older arthritic hands to operate than the tiny, seemingly difficulty to operate manual slider system of Walton.

b. Regarding claim 2, the combination of Walton and Wirschafter substantially teaches all that is claimed as discussed in the rejection of claim 1 above. Walton also teaches wherein the c-shaped support provides a cavity (16, Fig. 1) capable of housing circuitry.

c. Regarding claim 4, the combination of Walton and Wirschafter substantially teaches all that is claimed as discussed in the rejection of claim 1 above.

As combined in claim 1, the wholesale combination of the circuitry and controls of Wirschafter with the housing of Walton also teaches wherein the wherein the circuit provides a timer (Wirschafter, 12, Fig. 1) and the circuitry includes an adjusting device (control switches 19, Fig. 1) for adjusting the duration between energizing of the alarm, the adjusting device being exposed through an exterior of the C-shaped support (see location of switches 19 on outside of container, Fig. 1).

3. Claims 5-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walton in view of Wirschafter as applied to claims 1 and 2 above, and further in view of Carlson, US 4,223,801 (Carlson).

a. Regarding claim 5:

The combination of Walton and Wirschafter substantially teaches all that is claimed as discussed in the rejection of claim 2 above.

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The combination of Walton and Wirtschafter does not teach wherein the circuit provides a receiver including an antenna for receiving a signal from a remote source for energizing the alarm at predetermined times.

Carlson teaches an automatic periodic drug dispensing system with crystal detectors (90, Fig. 8) that receive radio signals (col. 6, l. 19), wherein the crystal detectors detect signals that signal to a patient when it is time to take a medication (col. 6, ll. 1-38). Carlson teaches that the extreme importance of timely taking medication is obvious to those skilled in the art.

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to further modify Walton to include a system for receiving a signal from a remote source for energizing the alarm for predetermined times as taught by Carlson, because a person having ordinary skill in the art would recognize that such a redundant backup system to the normal alarm system would help ensure the no dosages are doubled or missed, because a person having ordinary skill in the art would recognize the extreme importance of ensuring that the proper medications are taken at the proper time.

b. Regarding claim 6:

The combination of Walton and Wirtschafter substantially teaches all that is claimed as discussed in the rejection of claim 1 above.

The combination of Walton and Wirtschafter does not teach wherein the C-shaped support is non-opaque and the alarm is a light emitter having an output device inside the support so energization of the light emitter produces light inside the non-opaque support which is visible from exterior of the support.

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Carlson teaches a non-opaque portion (the opening hole for light 98, Fig. 5) wherein the alarm is a light emitter (98, Fig. 5) having an output device inside the support (the light is housed inside the housing 74) so energization of the light emitter produces light inside the non-opaque support which is visible from exterior of the support.

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to further modify Walton to add visual indication means to the alarm as taught by Carlson, because a person having ordinary skill in the art would recognize that a visual alarm would be extremely advantageous for indicating to a person with full or even partial hearing loss that it is time to take their medication.

c. Regarding claim 7:

The combination of Walton, Wirtschafter and Carlson substantially teaches all that is claimed as discussed in the rejection of claim 6 above.

The combination of Walton, Wirtschafter and Carlson as set forth in the rejection of claim 6 does not teach wherein the alarm includes a second light emitter providing a different color from the first mentioned light emitter.

Carlson teaches wherein multiple lights 98 may be included, each with a different color (col. 6, l. 68 through col. 7, l. 2).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to further modify Walton to include a second light emitter providing a different color from the first mentioned light emitter as taught by Carlson, because a person having ordinary skill in the art would recognize that such a multicolored indicator may be more

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noticeable by a patient with full or partial hearing loss, thereby helping ensure that the proper dosage is taken at the proper time.

d. Regarding claim 8:

The combination of Walton, Wirtschafter and Carlson substantially teaches all that is claimed as discussed in the rejection of claim 7 above.

The combination of Walton, Wirtschafter and Carlson as set forth in the rejection of claim 7 does not teach wherein the circuitry provides for alternately energizing the first light emitter and the second light emitter.

Carlson teaches that each of the lights may be separately energized for separate medicines (col. 6, l. 68 through col. 7, l. 2).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to further modify Walton to include a second light emitter providing a different color from the first mentioned light emitter as taught by Carlson, because a person having ordinary skill in the art would recognize that such multicolored, alternately energized indicators may be more noticeable by a patient with full or partial hearing loss, thereby helping ensure that the proper dosage is taken at the proper time.

4. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Walton in view of Wirtschafter as applied to claims 1 and 2 above, and further in view of Shino, US 6,430,111 B1 (Shino).

The combination of Walton and Wirtschafter substantially teaches all that is claimed as discussed in the rejection of claim 1 above.



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The combination of Walton and Wirtschafter does not teach wherein the battery terminals include terminals exposed through the support for engagement with a battery charger for recharging a battery in the battery receiver.

Shino teaches a battery operated electronic timepiece including terminals (301, 305, Fig. 1) that are for recharging an internal battery (col. 1, ll. 34-61).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to further modify Walton to include external terminals to recharge the battery as taught by Shino, because a person having ordinary skill in the art would recognize that batteries sometimes lose power and either must be replaced or recharged, and that recharging batteries would be more economical and environmentally friendly than constantly discarding and replacing used batteries.

#### *Response to Arguments*

5. Applicant's arguments with respect to claims 1-9 have been considered but are moot in view of the new ground(s) of rejection.

#### *Allowable Subject Matter*

6. Claims 3 and 10-12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### *Conclusion*

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leo T. Hinze whose telephone number is (571) 272-2167. The examiner can normally be reached on M-F 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Hirshfeld can be reached on (571) 272-2168. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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14 October 2005



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